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September 6, 2002

Via Hand-Delivery

K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37219

**Re: Petition of Chattanooga Gas Company for Approval of Change
in Purchase Gas Adjustment
Docket No. 02-00383**

Dear Mr. Waddell:

Enclosed you will find the original and 13 copies of Chattanooga Gas Company's Petition for Appeal in the above referenced docket.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



D. Billye Sanders
Attorney for Chattanooga Gas Company

DBS:lmb
Enclosures

cc: Hal Novak
Archie Hickerson
Earl Burton
Vance Broemel

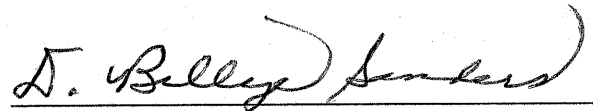
CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of September, 2002, a true and correct copy of the foregoing Petition for Appeal was served on the persons below by hand delivery or by placing same in the U.S. mail, postage pre-paid:

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D. Billye Sanders

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

PETITION OF CHATTANOOGA GAS)	
COMPANY FOR APPROVAL OF)	
CHANGE IN PURCHASED GAS)	DOCKET NO. 02-00383
ADJUSTMENT)	

PETITION FOR APPEAL

Pursuant to Tenn. Code Ann. § 4-5-315, Chattanooga Gas Company, a Tennessee corporation, ("Chattanooga Gas", "Petitioner" or "Company") timely files this Petition for Appeal of the Initial Order issued by Hearing Officer Richard Collier on August 30, 2002 (the "Initial Order"). The Initial Order denied the Petition for Approval of Change in Purchased Gas Adjustment ("PGA") which would have changed the existing PGA rider by establishing an experimental Fixed Rate Tariff ("FRT") for residential and small commercial customers. Petitioner requests that the Tennessee Regulatory Authority ("TRA" or "Authority") reverse the Initial Order, and approve the FRT which would allow Petitioner to enter into twelve month gas procurement contracts beginning October 1, 2002 for the upcoming heating season. Below is a Memorandum of Law and discussion of the findings of fact and conclusions of law in the Initial Order which supports the Petitioner's position that the Initial Order should be reversed and the experimental tariff should be approved.

Due to the status of the docket, the Petitioner further requests (1) that a date not later than September 19th , 2002 be set as the deadline for the Consumer Advocate Protection Division ("CAPD"), the other party in this docket, to file a brief in response to this Petition to Appeal and Memorandum of Law; and (2) that the TRA set this matter for oral argument and a decision prior to September 25, 2002 in order to preserve the ability of the Petitioner to institute the FRT on October 1, 2002 for the upcoming winter heating season.

MEMORANDUM OF LAW

Standard for Review

The standard for review of an initial order by the TRA directors is set forth in T.C.A. § 4-5-315. "The person reviewing an initial order shall exercise all the decision making power that the agency would have had to render a final order had the agency presided over the hearing, except to the extent that the issues subject to review are limited by rule or statute or by the agency upon notice to all parties." T.C. A. § 4-5-315 (e). There have been no limitations set by rule or statute, therefore the agency is free to review the record and to make its own findings and conclusions in this docket. The Hearing Officer has framed his findings and conclusions around issues raised by the CAPD, the only intervenor in this docket. Although we have addressed these issues, the only issues that are necessary to decide this matter are:

1. Whether the experimental fixed rate tariff proposed in this docket is just and reasonable?
2. Whether as a matter of policy the TRA wishes to adopt the experimental tariff on a trial basis for three years?

The Petitioner believes the answer to each of these questions should be "yes". The Petitioner's arguments below are outlined to respond to the findings and conclusions in the Initial Order. These arguments provide support for an affirmative answer to the questions above and demonstrate why the Initial Order should be reversed and a new order entered approving the FRT.

I. The proposed Fixed Rate Tariff is just and reasonable pursuant to Tenn. Code Ann. § 65-5-203.

Petitioner agrees with the Hearing Officer's statement in Section I of his findings and conclusions that the Authority has the duty, by statute, to determine that rate increases or changes in rates are "just and reasonable." Tenn. Code Ann. § 65-5-203 (a). (Initial Order page 22) However, the Authority is not bound to follow any particular approach in determining whether or not rates are just and reasonable; in essence the agency's decision is a "value judgment to be made by the Commission in the exercise of its sound regulatory judgment and discretion." CF Industries v. Tennessee Public Service Commission, 599 S.W.2d 536, 542 (Tenn. 1980). The Hearing Officer merely makes a statement of the legal standard in Section I of the findings and conclusions. Contrary to the conclusion of the Hearing Officer in Section III (page 25 of the Initial Order), the record does demonstrates

that the FRT is just and reasonable. The Petitioner's arguments in support of the justness and reasonableness of the FRT are therefore discussed in Section III of this brief in response to the conclusions of the Hearing Officer.

II. The Tariff is not subject to the PGA Rule because the Petitioner has requested a waiver.

A. The Petition requested the Authority to waive the PGA Rule.

The Hearing Officer found that an element of the FRT, i.e. the risk premium, is a cost that is not addressed by the PGA Rule. (Initial Order, page 23-24) The Petition, however, clearly requests a waiver of the PGA Rule (Petition, page 5). The second paragraph of the tariff itself also contains a PGA rule waiver provision (See Exhibit A to the Petition as modified on May 9, 2002). Consequently, if the waiver is granted pursuant to the Petition, then inconsistent portions of the PGA rule do not apply to the FRT. It should be remembered that the proposed tariff is an EXPERIMENTAL tariff! The Hearing Officer seems to lose sight of this. It is appropriate for the TRA to try an experiment before making a permanent change. While the method of recovery of gas cost has changed over the years, none has been perfect, including the current PGA.

The Hearing Officer concluded that "The PGA Rule serves its intended purpose well."¹ (Initial Order page 24) While the Company acknowledges that the

¹ The PGA Rules are "intended to permit the Company to recover, in timely fashion, the total cost of gas purchased for delivery to its customers and to assure that the Company does not over-collect or under-collect Gas Costs from its customers." TRA Rule §1220-4-7-.02.

PGA Rule serves the purpose of allowing the company to collect its gas costs, the fact remains that it is also an appropriate function of the TRA to determine if improvements can be made through an experimental tariff such as that proposed by the Petitioner. If price volatility can be better curbed and if customers' charges for gas can be better matched with the gas they use, then it is reasonable to adopt a tariff that will provide these benefits. Because the FRT provides no true up, the current customers are assured that they will only pay for the gas that they use. Under the current PGA Rule, if a gas company under-collects gas costs in 2001 and a 2001 customer moves out of the city, ceases to use gas or reduces its gas consumption the following year, then any under-collections that are charged to the customer base in the following year through the Actual Cost Adjustment (ACA) are recovered from customers that did not use the gas. The converse is true regarding refunds, i.e., the customers receiving the Refund Adjustment (RA) may not necessarily be the same customers that consumed the gas that necessitated the refund. Therefore, in addition to controlling volatility of gas prices, the FRT provides a reasonable and equitable manner of distributing costs by better matching gas charges to the customer who consumed the gas.

At the hearing the CAPD witness acknowledged (Transcript page 170, line 21- page 171 line 2) and the Hearing Officer acknowledged in his Initial Order (page 25 and 26) that prior to the institution of the PGA Rule that gas costs were included in base rates. Under this method of gas cost recovery, gas costs were projected for the adjusted test year and rates were set to cover costs including a reasonable rate

of return. Under this traditional rate making method, the customer paid a fixed rate for gas and the company assumed the risk that the projection may not be accurate. The company was compensated for assuming this risk through the rate of return. Mr. Buckner, the CAPD witness, acknowledged that the Company should be compensated for risk and that all risks are not known, even under traditional rate of return rate making, which continues to be the method used to determine base rates. (Transcript, page 152, line 25 through page 153, line 11). Assumption of risk is a cost for which compensation in rates is appropriate.² Accordingly, the assumption of risk of a fixed rate is a cost that is appropriately recoverable from rate payers.

B. The TRA has the authority to waive rules for “good cause.”

TRA Rule § 1220-1-1-.05 (1) expressly authorizes the Authority to waive rules “for good cause” which includes “expediting the disposition of any matter.” The Hearing Officer, however, erroneously relied upon a more stringent “compelling reasons” standard. (Initial Order, page 26) No legal citations were provided for the “compelling reasons” standard.

Although TRA Rule § 1220-1-1-.05 (1) does not define “good cause,” it does provide as an example expediting the disposition of any matter. Petitioner asserts that providing customers with a fixed rate that will reduce volatility of prices, help

² In Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, at 604 (1944) the Supreme Court stated that “Rates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to *compensate its investors for the risks assumed* certainly cannot be condemned as invalid, even though they might produce only a meager return of the so-called ‘fair value’ rate base.” (Emphasis added).

customers budget energy expenditures, and ensure that future customers will not bear the cost of previous customers natural gas services represents good cause for waiver of the PGA Rule.

III. The fixed rate tariff will produce a just and reasonable rate.

A. A customer option for the FRT is not required to make the tariff just and reasonable.

In Section III of the Initial Order (page 25), the Hearing Officer concludes that the FRT is not just and reasonable because the risk premium causes the rates to exceed actual costs and that the rates are mandatory. As stated earlier in this brief (Section II above, page 4), assumption of risk associated with guaranteeing a fixed rate is an appropriate cost to be recovered from rate payers. Even if the risk premium does not fit neatly into the definition of "gas costs" under the current PGA Rule it is recoverable as a cost of assuming risk. The Company has asked for a waiver of the PGA Rule in order to try a new mechanism that could benefit the rate payers. The CAPD and the Hearing Officer dwell on the scenario of monthly spot market gas prices going below the fixed rate and concern that the Company will make a profit from the risk premium. However, the TRA's role is to balance the interest of rate payers and company investors. The opposite scenario that market rates will exceed the fixed rate is just as likely. In such case, the Company will spend the risk premium to cover those costs and the risk premium may not be sufficient, resulting in a loss for the Company. Witness Buckner characterized the

gas prices experienced in the winter of 2000- 2001 as an aberration (Transcript page 151, lines 6-11); however, Mr. Buckner acknowledged on cross examination that no one knows what the price of gas will be tomorrow or if gas will rise above \$1.00 per CCF during the winter of 2002-2003. (Transcript page 158 lines 24-25 to page 159, lines 1-13).

The Hearing Officer's finding that the mandatory nature of rates under the FRT makes them unjust and unreasonable is without merit. Requiring a tariff to be mandatory does not make it unjust and unreasonable. All current tariffs for the classes of customers in question are required, not optional. Customers were given the opportunity to intervene and participate in this docket through the public notice made by the Company and the rules and procedures of the Authority. No customers of Petitioner intervened. The fact that at least 31 residential and commercial customers of Chattanooga Gas have a heightened awareness of the proposed tariff, due to participation in focus groups (Pre-Filed Testimony of Wright, page 5), and none intervened in the proceeding or contacted the TRA, is an indication that even those that expressed opposition to the tariff are not so passionate in their opposition as to make their concerns known to the Agency.

The record contains evidence that an optional FRT would be burdensome for Petitioner. As Larry Buie testified, Chattanooga Gas considered establishing an optional program but found that the cost of setting up a new computer billing system for those customers opting into the program and education of customers and employees regarding the option would be cost prohibitive (Pre-Filed Testimony of

Larry Buie, page 5; Transcript, page 16, lines 18-23). The CAPD offered evidenced that some gas companies in other states offer optional fixed rate tariffs, however on cross-examination it was revealed that the CAPD had done no research as to the exact nature of those tariffs, how they compared with Chattanooga Gas' proposal, the cost associated with implementing the optional rates, whether the cost was recovered through rates to the customers, or how many states may offer a flat rate that is not optional. (Transcript, Buckner testimony, page 137 lines 10 through page 139, line 16). Mr. Buie testified that changes to the Company's computer system would cost in the range of \$230,000, excluding internal training and customer education (Transcript, page 30 line 25 through page 31 line 19).

The Hearing Officer found that the "fact' that the Company may incur substantial (or 'prohibitive') costs in making changes to its billing system and in educating its customer base is not sufficient reason to make the FRT mandatory for customers." (Initial Order page 30) It is unreasonable to expect the Company and/or the rate payers to bear the cost of setting up a new billing system for an experimental tariff that may be in place for only three years and that may not be allowed to go into effect. It is more reasonable to allow the rates to go in effect and monitor the experience before incurring such an expense.

B The risk premium was not calculated in an arbitrary manner.

The risk premium was used by Petitioner as a quantified indicator of the risk it would be assuming by insuring an annual fixed rate to its customers through the tariff period. These risks, which admittedly are hard to quantify, include:

1. The potential lost demand charges from industrial customers who leave Chattanooga Gas' firm tariff (which are currently passed through to customers under the existing PGA Rule);
2. Any increase in pipeline transportation costs approved by the Federal Energy Regulatory Commission ("FERC") (currently passed through under the existing PGA Rule);
3. Lost and unaccounted for gas volumes (currently passed through under the existing PGA Rule);
4. Loss of residential and commercial customers (adjustments for same currently passed through under the existing PGA Rule);
5. Loss of existing load from the Residential and Commercial customers (adjustments for same currently passed through under the existing PGA Rule); and
6. Any significant changes in the gas that is placed in or taken out of storage which may impact its resale value (currently passed through under the existing PGA Rule). (Pre-Filed Testimony of William H. Novak, pages 8-9; Petitioner's Response to TRA Data Request #8 dated May 13, 2002.)

As noted above, these risks are currently recovered under the existing PGA after they are quantified. None of these risks will be recoverable under the FRT. The Company should not be required to absorb these risks without some compensation.

Precisely because these potential risks are difficult to quantify, Petitioner used the TRA approved rate of return (approximately 9.08%), multiplied by the known and quantifiable costs, to establish the risk premium. (Pre-Filed Testimony of William H. Novak, page 9). The rate of return represents the amount of just and reasonable profits, over and above the costs incurred by a public utility, that the Authority, and its predecessor the Public Service Commission, have allowed regulated public utilities to charge and recover for years. Petitioner, a regulated public utility, believes that using the previously approved rate of return multiplied by all known costs as a measure for the compensation it should receive in return for absorbing all of the risks identified above under the FRT is reasonable.³ Even Mr. Buckner acknowledged that companies were prior to the PGA and still are, compensated for unknown risks through their rate of return (Transcript, page 152, line 25 to page 153, lines 1-11).

As an additional check with respect to the reasonableness of the resultant rate, Witness Novak testified that the rate produced under its FRT was less than all of the fixed rates offered by marketers in Georgia. (Novak Rebuttal page 4, lines 6-

13). Similarly, the pro forma rate of \$.65 (filed on August 30, 2002) is comparable to the existing rate of approximately \$.65 under the current tariff.

In spite of the fact that Mr. Buckner testified that he did not consider himself to be an expert on the cost of gas (Transcript, page 152, lines 22–24), the Hearing Officer appears to have relied on his opinions in making the findings and conclusions in this docket.

The Hearing Officer also noted that, due to his belief that the risk premium was calculated in an arbitrary manner, that the approval of the FRT tariff by the TRA might also be deemed arbitrary. This argument is without merit. If the Authority finds that the FRT provides a formula that will produce a just and reasonable rate, it will be protected by the presumption that has been recognized by the courts that the rates established by the TRA (and its predecessor the PSC) are correct, and the burden of proof will be any challenger to prove that they are unjust and unreasonable. CF Industries, 599 S.W.2d at 540. Because the FRT is an experimental tariff, Chattanooga Gas added an annual check point for the TRA by including the provision that allows the TRA to suspend the tariff by September 25 of each year if it believes market conditions may produce an unreasonable rate based upon the Company's September 1 pro forma filing.

C. Approval of the FRT does not shift the responsibility for making gas purchasing decisions from Petitioner to the TRA.

³ In Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, at 602 (1944) the Supreme Court said in interpreting the Natural Gas Act that "Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling."

The Authority has the statutory duty to approve, and disapprove, rates for public utilities. Tenn. Code Ann. § 65-5-203 (a). Approval of the FRT Petition does not burden the Authority with any duties beyond approving, in advance, the tariff structure for Petitioner's customers. The actual purchasing decision will still be made by Chattanooga Gas, not the Authority. Once the tariff is approved, it is self executing.

Nonetheless, if the Authority is uncomfortable receiving the pro forma each September, Petitioner will agree to forego such filing. As stated above, the purpose of making the pro forma available to the Authority each September 1st was to provide the Authority with an additional safeguard to suspend the FRT if it believed that the upcoming fixed rate was unjust or unreasonable. While the pro forma does not guarantee a certain fixed rate, it does demonstrate the market conditions and provide the Authority with an indication of where the fixed rate may fall on October 1st.

D. The Hearing Officer improperly weighed the evidence regarding customer preference.

The Hearing Officer also found that the results of customer focus groups provided by witness Wright were not helpful and of little value. (Initial Order, page 30) These focus groups were conducted by an independent third party to determine if customers would be interested in the concept of a fixed rate tariff. (Pre-Filed Testimony of Beverly Wright, page 3). Although this information was not used as a definitive show of support for the fixed rate tariff, Petitioner offered the results as

an indication that approximately two-thirds (2/3) of the customers surveyed were either indifferent to or in favor of the proposal (Pre-Filed Testimony of Beverly Wright, page 6) .

Despite the fact that Chattanooga Gas Company provided some input as to what customers thought about the proposal, the Hearing Officer appeared to give more weight to Mr. Buckner's testimony that customers should have the option to be place under the FRT (Transcript, page 170, lines 15-17), even though: (1) Mr. Buckner admitted that the Consumer Advocate and Protection Division has done no studies to determine whether the customers of Chattanooga Gas prefer fixed gas costs or variable gas costs; (2) Mr. Buckner was not aware of any customer surveys that were done to determine if the majority of Chattanooga Gas customers liked the present PGA before it was adopted by the TRA.; and (3) Mr. Buckner was not aware of any customer surveys that had been done to determine if the majority of the customers like the present PGA as it is now. (Transcript, page 158, lines 5-23). The record indicated that CAPD had no contact with Chattanooga Gas customers upon which to base their opinions of what Chattanooga Gas customers want. (Transcript, page 158 lines 5-23). Mr. Buckner's testimony included the imposition of his personal opinion regarding what Chattanooga Gas customers want. He said "That's what I would like to pay. I don't need to interview a great number of people to tell that." (Transcript, page 169, lines 1-7). The Hearing Officer accurately states that the proposed tariff shifts risk from the customers to the Company. After the analysis of the effect of the FRT on customers during high and low market

prices, he concludes that “while such a scenario may appear fair in terms of shifting the risk of higher gas costs, it is not just and reasonable when imposed upon the customer without an option.” (Initial Order, page 27). Despite this speculation by Mr. Buckner, the Hearing Officer appears to adopt Mr. Buckner’s personal opinion.

The Petition is not suggesting that customers must be surveyed prior to the TRA’s approval of a rate making decision that effects them. However, if any weight is given to customers’ concerns in this docket, the Company’s evidence is more credible. As noted in the Hearing Officer’s summary of the testimony, in the last focus group the presentation was modified in such a way to specifically inform the Chattanooga Gas customers that they would not have to make up the shortfall if the Company did not fully collect its gas costs under the proposed FRT. Only one customer in the final focus group expressed opposition to the proposal (Initial Order, page 16; Transcript, page 56). In addition, Mr. Buie testified that he met with various customers regarding their concerns with price volatility and is aware of the customer complaints that are related to volatility and high rates. (Transcript page 32, line 5 through page 33, line 10). Mr. Collier should have given some weight to this evidence. Historically, if even one customer intervenes in a rate proceeding, the Agency gives some deference.

IV. The Record does not support Hearing Officer’s negative inferences and mischaracterization of testimony.

- A. The Petitioner never stated that the FRT was based upon a “mandate” issued by the Authority.**

The Hearing Officer erroneously stated that Petitioner claimed to have a “mandate” from the Authority to establish the FRT. (Initial Order, page 31-33.) Petitioner did reference the discussions of the Directors at the October 9, 2001 and February 6, 2002 Authority Conferences, but did so only as anecdotal evidence that gas price volatility has been an issue for consumers in Tennessee and to put the Petition in context. The Petitioner gleaned from these comments that the TRA wanted gas companies to be innovative and proactive in dealing with high gas bills. One of the underlying causes of high gas bills is price volatility. Petitioner did not indicate that these statements constituted a mandate for the FRT Petition.

The use of the word “mandate” by the CAPD and the Hearing Officer in the context of the Director’s comments and in reference to lack of “customer mandate” is troubling throughout this docket, because neither is required for approval of this tariff. The Company never argued that there was a mandate from the prior TRA directors or that a customer mandate was needed to adopt the tariff. Approval of this experimental tariff is within the authority of the current TRA directors.

Chattanooga Gas developed the tariff in response to the financial hardships faced by residential and small commercial customers due to the volatility in natural gas wholesale prices during past winter heating seasons, particularly the winter of 2000, and in response to the request by the TRA that gas companies be actively engaged in developing methods to reduce the impact of gas price volatility on natural gas customers. As an example, Exhibit LB-1 to the Pre-Filed Testimony of

Larry Buie demonstrates that gas rates ranged from \$.32 to \$1.00 from July 1, 1996 to April, 2002. An increase range of over 300%.

B. The Hearing Officer ignored testimony regarding the accounting for affiliate transactions and the reasons for not placing the FRT out for bid.

The Hearing Officer mentions as troubling, two items that the Company witnesses fully explained. This is an indication that the Hearing Officer ignored the evidence. On page 33 of the Initial Order the Hearing Officer says that it troubling that the Company does not know whether the profits, if any, from the FRT would go to Chattanooga Gas, Sequent or some other affiliate of the Company. The inference of the Hearing Officer is that the Company is trying to hide something. To the contrary, the FRT by its very terms says the Company will absorb the loss or gain if the rates vary from costs. In utility accounting if the company assumes the risk and is not passing gain or loss to the rate payers it is accounted for below the line. Thus, Witness Novak testified that the company had not decided which company the gain or loss would be attributed to because that decision would be determined by the affiliate transaction rules that the company must comply with under the Public Utility Holding Company Act. (Transcript, page 87, line 22 to page 88 line 19). The company also provided information about the safeguards in the Public Utility Holding Company Act that require holding companies to price the sale of goods and services between affiliates at cost in its responses to Data Request No. 2 from the CAPD (Response dated May 17, 2002, Item 12). Mr. Novak was very open about this and negative inferences are not warranted. Sequent acts as Chattanooga

Gas Company's agent for purchasing gas and does not mark up the gas. (Transcript, page 67 lines 10-13). The TRA audits these receipts and the Company testified that it will continue to make these receipts available for audit by the TRA. (Transcript, page 88, line 23 through page 89, line 19).

The other area in which the Hearing Officer expressed concern was that the Company declined to put the gas purchasing for the Company out to bid. Again the Company witnesses explanations were ignored. Witness Buie explained that the FRT is an experimental tariff and an outside bidder may not be willing to take a long term view to overcome any obstacles incurred and to work with the TRA staff regarding audits, etc. (Buie Pre-filed testimony, page 4, line 12 to page 5, lines 1-2.) Further, it would be inefficient and costly for bidders to bid on a contract involving a tariff that was not approved. Aside from the fact that this is an experimental tariff, Witness Novak explained that Sequent Energy Management (an affiliate of Chattanooga Gas) or its predecessor, AGL Energy Services has purchased gas on behalf of Chattanooga Gas since AGL (the parent of Chattanooga Gas and Sequent) purchased Chattanooga Gas in 1988. (Transcript, page 67, lines 14-21). Consequently, the cost of the Sequent employees that perform the gas purchasing function for Chattanooga Gas is included in Chattanooga's cost of service in its base rates. (Transcript page 67, lines 3 through page 68 line 5). If Chattanooga hires someone else to do this, the Company will have to pay an additional amount to cover the winning bidder's cost of service (employees, overhead, etc.). Thus, it would not be prudent to make the rate payers pay again for a service that is covered in

base rates. Further, if the bidder guarantees a flat rate the bidder will also likely charge a fee for assuming that risk, or if the bidder buys that gas from a gas marketer⁴ who offers a flat rate then the “risk premium” is already embedded in the rates. It is unlikely that any independent company would bid on a contract to act as gas purchasing agent for Chattanooga without expecting a profit. (Transcript, page 68, lines 3-5; page 92, lines 18-21; Rebuttal Testimony of Novak, page 5). Nonetheless, Mr. Buie testified the Company would not foreclose the possibility of accepting bids for this service in the future. (Buie Pre-filed Testimony page 4, lines 14-15) The foregoing are certainly reasonable explanations for not accepting bids at this time, but evidence regarding this was ignored by the Hearing Officer.

C. The Hearing Officer’s reference to the Company’s “incentive plan” requires clarification.

In Section III, sentence A of the Initial Order (page 25), the Hearing Officer states that “Chattanooga Gas has not demonstrated sufficient grounds to support its request to deviate from the existing PGA Rules or *from its own incentive plan.*” (emphasis added) Aside from this statement no further reference to the incentive plan is made in the Initial Order. Nor does Petitioner recall the incentive plan being raised in the pleadings or at the hearing. The Petitioner assumes that the Hearing Officer is referring to the Company’s Performance-Based Ratemaking (“PBR”) tariff that was approved in TRA Docket No. 01-00619. The PBR tariff excuses the Company from a prudence audit if it purchases gas below certain

⁴ Witness Novak speaks of gas marketers that offer flat rates in his rebuttal testimony. (Novak Rebuttal Testimony, page 4, lines 6-13).

market indexes set forth in the PBR tariff. The tariff would no longer be applicable if the FRT is approved. Witness Novak testified that under the FRT, prudence of gas purchases would be determined by market prices on the date of futures contracts as opposed to the date of delivery of gas and that the Company would be subject to prudence audits based upon that standard. (Transcript, page 94, line 24 through page 95, line 10; page 95, line 18 through page 96, line 9; Pre-Filed Testimony of Novak, page 10, line 17 through page 11, line 4).

V. If this Petition for Appeal is granted, final disposition of this matter must take place prior to September 25, 2002 in order to preserve the Company's ability to implement the FRT in the 2002-2003 heating season.

Petitioner filed its FRT Petition on April 8, 2002, nearly six months in advance of the effective date of October 1, 2002 in order to allow the Authority and the Consumer Advocate Protection Division to have any questions and issues resolved well in advance of the effective date. As stated in the Petition, the Authority has until September 25th of each of the three years to halt implementation of the FRT for the upcoming year. In order to preserve the ability of the company to put the tariff in effect for this year's heating season, we must have a decision on the tariff before September 25th. Therefore, Petitioner respectfully urges the Authority to consider this Petition for Appeal at a regularly scheduled, or specially set, Authority Conference prior to September 25th, so that it will not be prejudiced. T.C.A. § 4-5-315(e) indicates that the Agency shall afford an opportunity to present briefs and may afford each party an opportunity to present

oral argument. This section does not set a time frame for which the response brief should be filed, therefore it is in the discretion of the Agency to set a time for filing Responsive Briefs. Accordingly, Petitioner also requests that the Authority set a date no later than September 19th as the deadline for responses to this Petition in order to ensure that all parties are allowed their opportunity to respond without foreclosing a decision on the tariff by September 25th.

WHEREFORE, Petitioner respectfully requests that:

1. The Authority grant this Petition for Appeal.
2. The Authority set a deadline of no later than September 19, 2002 by which the CAPD must file any response to this Petition for Appeal and Memorandum of Law.
3. The Authority set this Petition for Appeal on the agenda of a regular or special Authority Conference for oral argument and decision prior to September 25, 2002.
4. The Authority reverse the Initial Order entered on August 30, 2002 and approve the FRT.
5. Petitioners be granted such other and/or further relief as may be warranted.

Respectfully submitted,

Chattanooga Gas Company

By: D. Billye Sanders

D. Billye Sanders, Esq.

Kristin M. Coile, Esq.

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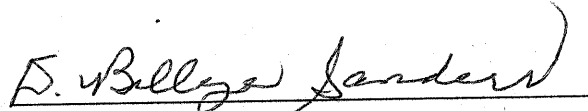
CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of September, 2002, a true and correct copy of the foregoing Petition was served on the persons below by hand delivery or by placing same in the U.S. mail, postage pre-paid:

Consumer Advocate and Protection Division
Office of Attorney General
2nd Floor
425 5th Avenue North
Nashville, Tennessee 37243-0491

Mailing address:

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Nashville, Tennessee 37202


D. Billye Sanders